

**Decree-Law 72/95  
Of 20 November 1995**

**Regulates Complementary Telecommunication Services ...**

This legislation defines the rules that regulate the regime of the establishment, management and exploration of the infrastructures and the rendering of complementary telecommunications services foreseen in Article 22 of Decree-Law 5/94, of 7 February.

The complementary services whose exploration involves the utilization of the basic telecommunications grid and complementary infrastructures to that grid, not integrating the concept of fundamental services, should be satisfied in the regime of competition by the public telecommunication services operators or duly licensed.

In the use of the faculty conferred by subparagraph a), No. 2 of Article 216 of the Constitution, the Government decrees the following:

**CHAPTER I  
Article 1  
Ambit and Object**

The legislation defines the regime for the establishment, management and exploration of the infrastructures of and the rendering of complementary telecommunications services.

**Article 2  
Definitions**

For the purpose of application of this legislation, the following definitions apply:

- a) **Complementary Telecommunication infrastructures:** All the telecommunication infrastructures defined in No. 1 of Article 23 of Decree-Law 5/94, of 7 February;
- b) **Complementary telecommunication services:** Telecommunication services whose exploration involves the utilization of complementary telecommunications structures;
- c) **Complementary telecommunication operators:** Operators of public services designated as such by No. 2 of Article 11 of Decree-Law 5/94, of 7 February and complementary telecommunication enterprises that explore telecommunication complementary services in any of the cases with adequate licensing titles;

- d) **Fixed complementary telecommunication services:** Telecommunications services in which the access of the participant is made through a fixed access system of participants in the basic telecommunications network;
- e) **Complementary mobile telecommunication services:** Complementary telecommunication services to which the access of the participant is done through a system of non-fixed participants access, utilizing radio-electric propagation in space.

### **Article 3**

#### **Access**

1. The telecommunication services can be rendered only after attribution of a license under the terms of this legislation.
2. The attribution of a license to provide fixed complementary telecommunication service is governed by the principle of plain accessibility. The conditions necessary for the verification of these conditions are indicated in the article that follows.
3. The attribution of license to provide mobile telecommunication services are governed by the principle of conditioned accessibility to the limitation of the electromagnetic spectrum and it is preceded by the realization of public tender and with the observance of the provisions of the Articles that follow.
4. The regulation of the public tender referred to in the preceding number is by resolution of the Council of Ministers.

### **Article 4**

#### **Requisites**

1. For the purpose of attributing a license, the complementary telecommunication service operator must abide by the following requisites of credibility and technical and financial capacity:
  - a) Take on the form of a capital stock or quota company and be legally constituted and registered in the Conservatory of Commercial Registration, and it should have as its commercial objective the exercise of the telecommunication activity;
  - b) Have adequate technical capacity to comply with the specific obligations of the license it proposes to obtain, disposing, namely, of a qualified personnel corps to exercise the activity;
  - c) Dispose of adequate economic structure, as well as the necessary financial resources to guarantee the start up and good management of the company;

- d) Dispose of an up to date and normally organized accounting that conforms to the National Accounting Plan and adequate for the analysis required for the project it proposes to develop referent to the complementary telecommunication service.
2. For the purposes of the provisions of subparagraph c) of the preceding number, the coverage by its own capital in amounts not less than 25% of the global investment value referring to the complementary services it proposes to provide, is considered adequate economic-financial capacity by the requester.
3. The public service providers are exempt from the requisites referred to in the preceding number.

## **Article 5**

### **Limits in the Composition of the Capital Stock**

1. The public use telecommunication operator cannot participate in the capital stock of another complementary telecommunication operator licensed To provide a complementary telecommunication service similar to the one attributed.
2. The limitations foreseen in Article 29 of Decree-Law 5/94, of 7 February, are applicable.

## **Article 6**

### **Rights and Obligations**

1. The following are rights of the complementary telecommunications operators:
- a) Develop the rendering of complementary telecommunications service under the terms defined in the respective licensing title;
  - b) Accede the basis telecommunications grid under conditions of plain equality with the guarantee of disposing of specified technical interfaces, as well as the guarantee to dispose of conditions of access, of utilization and of defined and published tariff regime;
  - c) Request, under the terms of the general law, the expropriation of immovables and the constitution of the administrative services that seem indispensable to the installation, protection and conservation of the infrastructures of the complementary telecommunications grid;
2. The following are obligations of the complementary telecommunication operators:
- a) Respect the conditions and limits defined in the licensing title;

- b) Comply with the national and international legal provisions, in the domain of telecommunication;
- c) Utilize equipment duly approved by the competent authority;
- d) Provide verification of the equipment duly approved by the competent entity;
- e) Proceed to the necessary corrections with a view to the regular operation of the installation and the adequate rendering of the licensed services;
- f) , Guarantee, in terms of equality, access to the services provided upon payment of the prices applied;
- g) Notify the General Directorate of Communications of any alterations to the respective contractual agreement.

## **CHAPTER II**

### **Licensing**

#### **Article 7**

#### **License**

1. It behooves the member of the government responsible for the area of communications, once verified the requisites of Article 4 and reviewed the elements referred to in number that follows, to attribute the license for the rendering of complementary telecommunication services and practice the other acts that involves its authorization and cancellation:
2. For the purposes of the preceding number, all the requesters should review:
  - a) The descriptive justification of the request;
  - b) The detailed description of the activity it proposes to develop, including the respective technical project;
  - c) Elements necessary to the verification of the requisites and conditions established, respectively, in Articles 4 and 5.
3. The following elements, among others, shall be indicated in the license:
  - a. Identification of the licensed entity;
  - b. Identification of the granting entity;
  - c. Identification of the oversight entity;

- d. Applicable regulation of the exploration, when available;
- e. Conditions for providing the service;
- f. Appropriate complementary telecommunications infrastructure that is permitted to be installed to provide the service;
- g. Geographic area of coverage;
- h. Duration and term of the license;
- i. Fee referred to in No. 2 of Article 11;

### **Article 8** **Alteration of the License**

1. Any alteration or modification to be introduced in the license during its validity period, solicited by the licensed entity, may be authorized by the General Directorate of Communications, which will proceed to the corresponding annotation in the respective title.
2. The alteration request must be fundamented and accompanied by the elements deemed necessary; with the due adaptations, the provisions of subparagraphs a) and b) No. 2 of the preceding Article are applicable.

### **Article 9** **Transmissibility of the License**

1. Three years after it is issued, the license may be transmitted to provide a complementary telecommunication service by prior authorization by the member of the government responsible for the area of communications.
2. The entity to which the license is transmitted has to meet all the requisites and limits contained in Articles 4 and 5 and assume all the rights and obligations inherent in the respective title from the vigilance of the same.

### **Article 10** **Beginning of Activity**

The activity foreseen in the licensing title must be initiated within a maximum of 18 months, counted from the date of its emission, save for duly justified reasons of *force-major* and as such recognized by the General Directorate of Communications.

## **Article 11**

### **Fee**

1. The emission of a license to provide complementary telecommunication services, as well as the eventual alterations, renovations and substitutions in case of loss, are subject to the payment of a fee to be established by dispatch of the member of the government responsible for Communications.
2. The licensed entity is subject to the payment of an annual fee to be fixed dispatch of the member of the government referred to in the preceding number.

## **CHAPTER III**

### **Document, Equipment and Oversight**

#### **Article 12**

#### **Model of the Documents**

The General Directorate of Communications approves the models of the documents necessary for the application of the provisions of this legislation.

#### **Article 13**

#### **Equipment**

1. All the equipment utilized in the complementary telecommunication equipment has to comply with the technical specifications required for the interoperation with the basic grid.
2. The interface of access to the complementary telecommunication services shall have to be clearly defined and the licensee should publish its technical specifications.
3. The acquisition, installation and conservation of the necessary terminal equipment to accede the service in question, is free.
4. The manufacturer should certify the equipment referred to in the preceding number, in the event of request by the licensed entity, as complying with the certification referred to in No. 2.

#### **Article 14**

#### **Oversight**

The General Directorate of Communications, through agents and representatives credentialed to that effect, performs the oversight of the conditions of the establishment, exploration and management of the complementary infrastructures.

## **CHAPTER IV**

### **Sanctions Regime**

#### **Article 15**

##### **Cancellation of the License**

1. The license to provide complementary telecommunication services may be cancelled by dispatch of the member of the government responsible for the communications area when its holder:

- a) Does not abide by the conditions and limits contained in the respective title;
- b) Opposes to the oversight and verification of the equipment;
- c) Refuses to apply corrective measures for the good operation of the installation and adequate rendering of the licensed service;
- d) In the case of a public service operator, it does not comply with the provisions of Article 27 of Decree-Law No. 5/94, of 7 February.
- e) Does not pay the taxes dues within the times established;
- f) Others defined by law.

2. In the case foreseen in subparagraph d) of the preceding number, the license to be cancelled shall be the one for the complementary service in whose benefit occurred practices that falsified the conditions of competition or that translate themselves into abuse of dominant positions.

3. When the faults committed are susceptible of correction, the member of government responsible for the area of communication shall determine the deadline for their repair, without prejudice to the application of the fines foreseen in Article 16.

#### **Article 16**

##### **Fines**

1. Without prejudice to other sanctions deemed applicable, the violations to the prescriptions of this legislation constitute transgressions, to which are applicable the following sanctions:

- a) From ecv 500,000\$00 to ecv 6,000,000\$00, in the case of violation of No. 2, Article 3 and of Article 5;
- b) From ecv 250,000\$00 to ecv 3,000,000\$00, in the case of violation of No. 2, Article 6 and No. 1 of Article 9;

- c) From ecv 100,000\$00 to ecv 1,500,000\$00, in the case of violation of the provisions of Article 11 and in Nos. 2 and 2 of Article 13.
- 2. In the infractions foreseen in the preceding number, negligence is punishable.

### **Article 17** **Processing Application of the Fines**

- 1. The decision to apply the fine is the competence of the member of the government responsible for the area of communication.
- 2. Processing of the fines is the competence of the General Directorate of Communications.
- 3. The amount of the fines applied reverts in 75% to the State and 15% to the acting entity.

## **CHAPTER V** **Final and Transitory Provisions**

### **Article 18** **Exceptional Norm**

- 1. Cabo Verde Telecom, Sarl shall provide the complementary telecommunication service it has been operating currently, under its statutes, until the respective licensing under the terms foreseen in this legislation, exempt of public bidding. To that end, it should initiate the corresponding process within 60 days, counting from the date this legislation goes into effect.
- 2. The licensing titles are non-transmissible to provide the mobile complementary services attributed under the terms of this legislation.

### **Article 19** **Regulating the Exploration**

The regulations for the exploration of the complementary telecommunication services shall be approved by ordinance from the member of the government responsible for the area of communication,

### **Article 20** **Practices that Restrict Competition**

The actions considered to be restrictive competition practices in the ambit of providing complementary telecommunication services are subject to special legislation on the matter.



**Article 21**  
**Effective Date**

This legislation goes into effect 30 days after its publication in the Official Bulletin

Viewed and approved in Council of Ministers  
*Carlos Veiga, António Gualberto do Rosário – Teófilo Figueiredo Silva*

Promulgated 8 November 1995

Publish it.

The President of the Republic, ANTÓNIO MASCARENHAS GOMES MONTEIRO

Referended 8 November 1995

The Prime Minister, *Carlos Veiga*